IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1887 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MANIBHAI CHAGANBHAI PARMAR

Appearance:

Mr. K.P. Rawal, AGP, for the appellantsNo. 1-2

MR GM AMIN for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 02/07/2001

ORAL JUDGEMENT

1. The appellants, by filing this appeal under Section 54 of the Land Acquisition Act, 1894 ('Act' for short) read with Section 96 of the Code of Civil Procedure, have challenged judgment and award dated Aovember 29, 1997, passed by the learned 2nd Extra Assistant Judge, Nadiad, in Land Acquisition Case No.626

of 1990.

2 Agricultural land of respondent-claimant situated at Village Vanthwali, Taluka Mehmadabad, came to be acquired for the public purpose of Express Highway by notification issued under Section 4 (1) of the Act on October 28th, 1987. After following the usual procedure under the Act, the Land Acquisition Officer made his award on October 21, 1988 and offered compensation of the acquired lands at the rate of Rs. 180 per Are for non-irrigated land and Rs. 200 per Are for irrigated land. The claimant was of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. He, therefore, made an application under Section 18 of the Act requiring the Land Acquisition Officer to refer the application for determination of market value of the land in question to the District Court, Kheda, at Nadiad. Accordingly, the application filed by the claimant was forwarded to the District Court, where it came to be numbered as Land Acquisition Case No. 626/1990. The claimant claimed- comAensation of his acquired land at the rate of Rs.2000/- per Are. Before the Reference Court, the claimant did not lead oral evidence, but produced copy of previous awards of the Reference Court and the judgement of the High Court with regard to acquired lands of adjoining villages Mankwa and Devkivansol.

3. The Reference Court, on appreciation of the evidence led by the claimant, deduced that the lands of village Mankawa and Devkivnasol are comparable for the purpose of determination of the market value of the present acquired lands. The Reference Court relied upon the previous awards of the Reference court and the judgment and award of the high Court with regard to acquired lands of adjoining villages Mankwa and Devkivasol and determined the market value of the present acquired lands at the rate of Rs.1170/- per Are with all the statutory benefits under the Act, which has given rise to filing of the above-numbered appeal by the appellants.

4. Heard the learned advocates for the parties.

5. Ordinarily, as per the principles laid down by the Supreme Court, if a claimant relies on previous awards, then he is supposed to lead oral evidence with regard to the comparison of the acquired lands as well as the lands which came to be acquired by previous awards. Unless oral evidence of comparison of the acquired lands and previously acquired lands is led, no reliance can be

placed on the previous awards of the acquired lands. It is not in dispute that previous award in respect of the acquired lands of adjoining village Mankwa in the year 1986 was confirmed by the High Court and the market value was determined at the rate of Rs. 1752 per Are. Similarly, for acquired lands of village Devkivansol in the year 1978, the market value was determined at the rate of Rs. 733/- per Are which was confirmed by the High Court in First Appeal Stamp No. 15806/1990. Thus, the determination of the market value of the land of adjoining village Devkivansol in the year 1978 was confirmed by the High Court at the rate of Rs. 733/- per Are. The Reference Court had given rise in market price because of gap of nine years between the two notification. The notification under Section 4 of the acquired land of Devkivansol was published in the year 1978, where as the notification of the present acquired land of village Vanthwali was published in the year 1987. In my view, the Reference Court has not committed any error in giving rise of price at 5% every year. Normally, in absence of oral evidence, the appeal could have been remanded to the Reference Court for deciding it afresh in accordance with law. But, if appeal is remanded, then the appellants - State of Gujarat shall have to incur unnecessary burden of interest, which will pile up every year. Therefore, instead of remanding the matter to the Reference Court, I have determined the market value by relying on previous awards of village Devkivansol and village Mankwa. The Reference Court had compared the lands of adjoining villages with the present acquired land and had come to the conclusion that the present acquired land was in all respects comparable with the acquired lands of village Devkivansol. In my opinion, the Reference Court had committed no error in placing reliance on the previous awards of village Devkivansol which had become final for the purpose of determination of the market value of the present acquired land. In my view, the Reference Court has awarded just, adequate and reasonable compensation to the claimant for the acquired land situated at village Vanthwali. Therefore, the determination of the market value of the present acquired land of village Vanthwali as on October 28, 1987 by the Reference Court at the rate of Rs. 1166/- which is rounded off at Rs. 1170/- per Are does not call for any interference in this appeal and the same is hereby confirmed. The statutory benefits extended in favour of the claimant under Section 23 (1-A), 23(2) and interest under Section 28 are also just and proper and do not call for any interference in this appeal.

6. In view of the foregoing discussion, this appeal

being meritless is hereby dismissed. No orders as to costs.

July 2, 2001 (M.H. KADRI,J.)

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